E-FILED
CNMI SUPREME COURT
E-filed: Feb 18 2021 06:15PM
Clerk Review: Feb 18 2021 06:15PM
Filing ID: 66349948
Case No.: 2019-SCC-0014-CIV
NoraV Borja

IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

PRC, LLC,
Plaintiff-Appellee,

v.

GLOBUIL RESORT SAIPAN CORPORATION, FORMERLY KNOWN AS CHANG SHIN RESORT SAIPAN CORPORATION D.B.A. HOTEL RIVIERA SAIPAN,
Defendant-Appellant.

Supreme Court No. 2019-SCC-0014-CIV

SLIP OPINION

Cite as: 2021 MP 5

Decided February 18, 2021

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE JOHN A. MANGLONA
JUSTICE PRO TEMPORE ROBERT J. TORRES, JR.

Superior Court Civil Action No. 12-0163CV
Associate Judge Joseph N. Camacho, Presiding

MANGLONA, J.:

¶ 1 Defendant-Appellant Globuil Resort Saipan Corporation, formerly known as Chang Shin Resort Saipan Corporation d.b.a. Hotel Riviera ("Globuil Resort"), appeals the Superior Court's Judgment[1] terminating its lease with PRC, LLC ("PRC"). Globuil Resort presents three issues, arguing the court erred by: (1) not dismissing the amended complaint based on the claim that PRC is a Limited Liability Company ("LLC") and does not qualify as a person of Northern Marianas Descent under Article XII; (2) adopting PRC's proposed findings of fact and conclusions of law almost verbatim; and (3) applying the wrong legal standard in terminating the lease. For the following reasons, we AFFIRM the Judgment.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 In 1988, Jose Manalo ("Manalo") leased Tract No. 22557-2[2] located in Fina Sisu, Saipan, to Chung Doo Young for 55 years. Manalo later sold the property in fee simple and assigned all his interests as lessor to PRC. Globuil Resort is Chung Doo Young's successor in interest and, therefore, the current lessee.

¶ 3 The lease contained several duties for the lessee, including paying $2,400 a month in rent, maintaining the premises in a clean and sanitary condition, avoiding waste, and paying taxes. If the lessee defaulted on rent or violated other provisions in the lease, the lessor had the option to initiate termination proceedings after providing written notice and ten days to cure the default.

¶ 4 In July 2012, PRC and two individuals sued Globuil Resort for defaulting on rental payments, failing to cure that default, and violating other lease provisions. The two individuals settled, leaving PRC as the only remaining plaintiff. In March 2013, PRC moved for summary judgment, which was denied. Four years later, PRC submitted its First Amended Complaint for breach of contract, claiming Globuil Resort had not cured default after several written notices were provided, paid its taxes, and maintained the property, among other violations.

¶ 5 In response to PRC's amended complaint, Globuil Resort filed a 12(b)(6) motion to dismiss claiming PRC was not qualified to hold a real property interest under Article XII of the NMI Constitution because PRC's LLC status does not qualify as a person of Northern Marianas descent.[3] The court denied the motion

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[1] *PRC v. Globuil Resort*, Civil Action No. 12-0163 (NMI Super. Ct. Aug. 19, 2019) ([Second Proposed] Judgment) ("Judgment").

[2] The tract of land in dispute is approximately 5,996 square meters and located in Fina Sisu, Saipan. A part of Hotel Riviera sits on this land.

[3] Article XII, in pertinent part, states "[t]he acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent." NMI CONST. art. XII, § 1. A corporation is considered

and declined to review any Article XII issue because it was premature and would be addressed at trial.

¶ 6 At the beginning of the trial, PRC focused its efforts on establishing its ownership of the property. Globuil Resort did not address its Article XII arguments from the motion to dismiss and instead responded to PRC stating, "We'll [] stipulate that PRC is the owner of the fee simple." App. 97. It failed to raise the issue again.[4]

¶ 7 After trial, both parties submitted proposed Findings of Fact and Conclusions of Law. Globuil Resort's proposed findings and conclusions consisted of 21 pages with no footnotes, while PRC's proposal consisted of 126 pages with 718 footnotes. The court's adopted Findings of Fact and Conclusions of Law ("Findings and Conclusions") of 131 pages and 670 footnotes was a near verbatim version of PRC's proposed findings of fact and conclusions of law. In the issued Findings and Conclusions, the court found the parties stipulated to PRC's ownership in fee simple. App. 372. It did not deem Globuil Resort's witness credible, and thus, found it in breach of contract because payments were intermittent but never fully paid or cured. In addition to a failure to make rent payments, Globuil Resort neglected to maintain the premises in a sanitary and safe condition, committing waste.[5]

¶ 8 Globuil Resort appeals the judgment terminating the lease and ordering it to pay PRC $335,618.37.[6]

II. JURISDICTION

¶ 9 We have jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 10 There are three issues on appeal. We review whether the court erred when it did not dismiss the First Amended Complaint de novo. *In Re Estate of Roberto*,

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Northern Marianas descent if "it is incorporated in the Commonwealth, has its principal place of business in the Commonwealth, has directors one-hundred percent of whom are persons of Northern Marianas descent and has voting shares [] one-hundred percent of which are actually owned by persons of Northern Marianas descent . . ." NMI CONST. art. XII, § 5.

[4] At oral argument, Globuil Resort retained a different attorney from its trial counsel.

[5] At trial, the court heard from several witnesses detailing the condition of the premises, including the company's security guard and Director of the Environmental Health Office. It also had the opportunity to review appraisal reports, reports from the Commonwealth Healthcare Corporation Bureau of Environmental Health and Civil Engineers, and other exhibits regarding the property's condition. Findings and Conclusions at 4–15.

[6] The $335,618.37 includes $176,802.00 for unpaid rent from the initiation of the lawsuit to March 2018, $29,400 for rent for the months of April 2018 to March 2019, and $129,416.37 in PRC's attorney fees and costs.

2002 MP 23 ¶ 4; *Syed v. Mobil Oil Marianas Islands, Inc.*, 2012 MP 20 ¶ 9. We review whether the court erred when it adopted PRC's Findings and Conclusions almost verbatim under the clear error standard. *Islam v. Islam*, 2009 MP 17 ¶ 7. We review whether the court erred in terminating the lease de novo. *Estate of Ogumoro v. Ko*, 2019 MP 4 ¶ 9 (citing *In re Estate of Amires*, 1997 MP 8 ¶ 3 n.3).

IV. DISCUSSION

A. Rule 12(b)(6) Motion to Dismiss

¶ 11 In its motion to dismiss, Globuil Resort argued PRC, as an LLC, could not acquire the rights of the lessor under Article XII, and thus did not have the right to initiate termination proceedings. In its opening brief on appeal, Globuil Resort once again argued that the Fina Sisu property "could not be transferred to a person not of Northern Marianas descent" and PRC, as an LLC, "never acquired the right to sue to terminate the lease." Opening Br. 9. It further argues that our decision in *In re Estate of Roberto*, 2003 MP 15, in which we upheld the constitutionality of the 2 CMC § 4991 statute of limitations, should be overruled because it directly conflicts with Article XII's void ab initio language. *Id.* at 8. PRC argues that Article XII arguments have either been conceded or waived.

¶ 12 When asked at oral argument about its statement at trial regarding PRC's ownership, Globuil Resort's counsel said, "The stipulation by the trial attorney that PRC is the fee simple owner . . . I think that [stipulation] is very hard to get around," and "I am not sure why the trial attorney did that but he did." Oral Argument at 23:13, *PRC v. Globuil Resort*.

¶ 13 A failure to raise certain issues during trial results in a waiver of those issues on appeal. *See Commonwealth Dev. Auth. v. Camacho*, 2010 MP 19 ¶¶ 22–25. If an issue is not argued at trial or developed on appeal, the court may decline to address it. *See generally Cody v. Northern Marianas Ret. Fund*, 2011 MP 16 ¶ 17 n.14. Undeveloped, unaddressed, or "unrefuted arguments [are] deemed conceded." *Hurt v. Cole*, 855 N.W.2d 493 (Wis. Ct. App. 2014) (citing to *State v. Pettit*, 492 N.W.2d 633 (Wis. Ct. App. 1992) and *Charolais Breeding Ranches v. FPC Sec. Corp.*, 855 N.W.2d 493 (Wis. Ct. App. 1979)). A party that does not dispute a claim has waived it. *People v. Ervin*, 990 P.2d 506, 527 (Cal. 2000). Therefore, appellate courts need not address undisputed or waived arguments.

¶ 14 Globuil Resort did not raise its Article XII claims at trial when PRC analyzed the transfer and assignments of the lease. Indeed, it stipulated to PRC's fee simple ownership. At no later point was the issue raised until its opening brief on appeal. But at oral argument, Globuil Resort conceded once again to PRC's ownership. That concession to ownership results in an undisputed and

waived claim.[7] Therefore, we find no need to address Globuil Resort's Article XII arguments about PRC's LLC status and the statute of limitations.[8]

¶ 15 PRC's complaint otherwise passes muster. On a 12(b)(6) motion to dismiss, the court must determine whether the nonmoving party fails to assert "a claim upon which relief can be granted." NMI R. CIV. P. 12(b)(6). Unlike the strict federal pleading standard, the Commonwealth requires only that a complaint "contain . . . direct allegations on every material point necessary to sustain a recovery on any legal theory . . . or contain allegations from which . . . evidence on these material points will be introduced at trial." *Syed*, 2012 MP 20 ¶ 19 (citing *In re the Adoption of Magofna*, 1 NMI 449, 454 (1990)). The plaintiff need plead only enough allegations to provide "fair notice" to the nonmoving party and "properly set out a claim for relief." *Id.* ¶¶ 10, 19. Complaints must be construed "in the light most favorable to the plaintiff." *Id.* ¶ 22 (citing *Cepeda v. Hefner*, 3 NMI 121, 127–28 (1992)). Complaints are construed "liberally" and allegations are taken as true. *Govendo v. Micronesian Garment Mfg, Inc.*, 2 NMI 270, 283 (1991).

¶ 16 The record below strongly supports that PRC established direct allegations on every material point necessary to sustain recovery on a breach of contract theory. PRC cited several provisions in the lease attached to the complaint, including the duty to pay rent. Ex. 5. It detailed the transfer of ownerships and attached recorded lease assignments. Compl. 2–3; Ex. 1, 5, 6, 7, 9. Section 19 of the lease gave the lessor, and its successor in interest, PRC, the option to terminate the lease in the event of a default. Ex. 5. Globuil Resort provided no evidence to rebut this finding of fact by the trial court. PRC provided an affidavit from PRC's sole member, detailing outstanding financial obligations and the condition of the property. Compl. 5–6; Ex. 4. It attached copies of a CNMI Division of Revenue and Taxation notice of tax liens on the property. Ex. 3. Construing the complaint in the light most favorable to the plaintiff, PRC sufficiently alleged breach of contract based on rental and tax default and established that it had the right to terminate the lease. Thus, PRC's complaint sufficiently alleged a breach of contract claim which it could remedy through its right to terminate. We therefore find no error in the denial of Globuil Resort's motion to dismiss.

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[7] Despite some development in its opening brief, we exercise our discretion in finding the issue waived after Globuil Resort failed to address its claims on *multiple* occasions.

[8] A party's concession is not equivalent to a legal determination. Courts are "not bound by an erroneous concession of counsel or the parties with respect to a legal principle and such 'concession does not . . . relieve us from the performance of our judicial function and does not require us to adopt the proposal urged upon us.'" *Matter of Knavel v. West Seneca Cent. Sch. Dist.*, 149 A.D.3d 1614, 1616 (quoting *People v. Berrios*, 28 N.Y.2d 361, 336–367 (N.Y. App. Div. 1971)). We will leave the Article XII issue on LLCs for another day.

B. Proposed Findings of Fact and Conclusions of Law

¶ 17 Globuil Resort argues the court clearly erred in adopting PRC's proposed Findings and Conclusions nearly verbatim. Opening Br. 10. It asserts that a key issue was whether there was an offer to cure the default before PRC sought to terminate the lease. *Id.* at 11. Globuil Resort argues the court did not give thoughtful consideration when adopting PRC's proposed findings of fact or give reasoning for finding witnesses less than credible. *Id.*

¶ 18 "Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous . . . ." NMI R. CIV. P. 52(a). We must determine "whether the trial court could rationally have found as it did, rather than whether the reviewing court would have ruled differently." *In re Estate of Rofag*, 2 NMI 18, 31 (1991) (citing *In re Estate of Taisakan*, 1 CR 326 (Dist. Ct. App. Div. 1982)).

¶ 19 Trial courts have discretion to adopt findings of fact verbatim or near verbatim. *Thomas v. Scarborough*, 977 So. 2d 393 (Miss. Ct. App. 2007) (citing *Rice Researchers, Inc. v. Hiter*, 512 So.2d 1259, 1266 (Miss. 1987)). For example, in *Thomas v. Scarborough*, the Mississippi Court of Appeals upheld a chancery court's near verbatim adoption of a party's findings of fact and conclusions of law. *Id.* at 397. It made a distinction, however, between the deference given to a chancellor and to a judge, stating that the complexity and volume of the chancery's caseload necessitated "substantial reliance upon the submissions of trial counsel." *Id.* at 396 (citing *Hiter*, 512 So.2d at 1266). The court would not "find such reliance to be in error so long as evidence exists which reasonably tends to support the chancellor's findings." *Id.* (citing *Sanderson v. Sanderson*, 824 So. 2d 623, 625–26 (Miss. 2002)).

¶ 20 Therefore, when findings are adopted verbatim or near verbatim, we must scrutinize such findings closely to determine whether there is an adequate performance of the judicial function. *NevadaCare, Inc. v. Dep't of Human Servs.*, 783 N.W.2d 459, 465 (Iowa 2010); *Clifford v. Klein*, 463 A.2d 709, 712 (Me. 1983). It must "view the record with care and . . . remand for new findings in those instances where this Court is uncertain whether the judicial function has been adequately performed." *Clifford*, 463 A.2d at 712–13. "The greater the extent to which the Court's eventual decision reflects no independent work on its part, the more careful we are obliged to be in our review." *Id.* at 713 (quoting *Ramey Construction Co. v. The Apache Tribe of the Mescalero Reservation*, 616 F.2d 464, 467 (10th Cir. 1980)). In *Clifford v. Klein*, the Maine Supreme Court scrutinized a verbatim adoption of findings and found the record did not contain evidence that the trial court adequately performed its judicial function. *Id.* There, the trial judge had communicated ex parte with only one party and asked that party to draft a proposed judgment, which the judge later adopted verbatim. *Id.* It found the court had not performed its judicial function because the evidence was too extensive and complex, and the party drafting the proposed judgment could not have intuited the final decision. *Id.*

¶ 21 There must be some indication, in the record or the adopted document, that the court undertook an independent and adequate assessment of the evidence and arguments presented by the parties. *Durant v. D.C. Zoning Comm'n*, 99 A.3d 253, 258 n.3 (D.C. 2014). The end product must represent the "decisionmaker's own determinations." *Id.* at 258. On review, the trial court may decide the proposed Findings and Conclusions represents its decision, but that review must be careful. It must look at the document with a "sharp eye" for excessive rhetoric, and findings and evidence favorable to one side while ignoring such evidence favorable to the other. *Id.* Verbatim adoption of proposed Findings and Conclusions is not advisable but may be acceptable where due diligence has been exercised and the concluded Findings and Conclusions aligns with its determination. There must be sufficient evidence and meaningful analysis to support Findings and Conclusions, and it must assure both parties that independent fact finding was exercised. While it is not illegal to adopt a Findings and Conclusions verbatim, lower courts should exercise caution in doing so.

¶ 22 Upon careful scrutiny of the Findings and Conclusions here, we find adequate performance of judicial function in issuing nearly verbatim the Findings and Conclusions. It issued a 131-page Findings and Conclusions. PRC's proposed Findings and Conclusions was slightly modified with differing introductions, an additional summary of what PRC is entitled to, and a reduced number of footnotes. While the majority of the proposed Findings and Conclusions was adopted verbatim, the court's Findings and Conclusions reached a new conclusion on compensation. It excluded PRC's proposed conclusion on breach of maintenance covenants and added statements of its own regarding witness testimony about curing the default. The Findings and Conclusions included an independent finding that any partial payment was an attempt to "buy time" rather than "cure the arrears." App. 394. Detailed elements of a breach of contract, analysis of CNMI case law, a timeline of events, and an evaluation of witness testimony were also included.

¶ 23 The changes show the court exercised its judicial function by independently evaluating evidence and considering both parties' arguments. Therefore, it did not clearly err in adopting the proposed Findings and Conclusions nearly verbatim.[9]

C. Termination of the Lease

¶ 24 Globuil Resort argues forfeiture of the lease was not warranted because circumstances justified equitable relief. Opening Br. 12. It argues it had a good

[9] This is the first time a Findings and Conclusions with hundreds of footnotes appears before us. Not surprisingly, the near verbatim adoption of more than a hundred pages of PRC's proposed Findings and Conclusions prompted an appeal demanding further review and scrutiny. A 131-page proposed Findings and Conclusions with 718 footnotes does not align with a court's function of distilling and summarizing the parties' facts and arguments. The trial court had an opportunity to flex its writing muscle, but opted not to do so.

faith intent to cure the default and has spent over ten times the amount of rent owed in planning for reopening. *Id.*

¶ 25 A lessor may, except as stated in the lease, recover unpaid rent from the tenant or terminate the lease after a demand is sent unless there are equitable considerations to justify extending payment time. *Estate of Ogumoro*, 2019 MP 4 ¶ 21. It "must prove demand of payment of the lessee when due." *Id.* ¶ 23 (quoting *Bd. of Park Comm'rs v. Key Tr. Co.*, 762 N.E.2d 509, 514 (Ohio Ct. App. 2001)). The purpose of a demand offers the lessee "reasonable opportunity to make payment. . . ." *Id.* (quoting *Elizabethtown Lodge, Loyal Order of Moose v. Ellis*, 137 A.2d 286, 290 (Pa. 1958)). Even with proof of written demand from a lessor, forfeiture of a lease is "not favored." *Cabrera v. Young*, 2001 MP 19 ¶ 23. However, when unpaid rent continues to "occur[] and subsist[] without apparent justification or legal excuse or a showing that it would be inequitable to enforce a forfeiture . . . a lessee is not entitled to relief." *Estate of Ogumoro*, 2019 MP 4 ¶ 27 (citing *Groendycke v. Ellis*, 470 P.2d 832, 835 (Kan. 1970)). And "where lack of good faith persists" forfeiture may be warranted when the lessee continuously fails to pay rent. *Cabrera*, 2001 MP 19 ¶ 24. A lessee does not have a right to equitable relief and if the court wishes, it is only granted "as a matter of grace." *Manglona v. Baza*, 2012 MP 4 ¶ 40.

¶ 26 The lease required PRC to send out a written demand for unpaid rent. On June 7, 2012, PRC sent written notices of $16,000 in unpaid rent via email and certified mail. The demand letter gave Globuil Resort ten days to cure. It made partial payments to PRC of $3,000 in July 2012 and about $2,000 in November 2012. By February 2013, Globuil Resort's witness, Mr. Park, knew that the company was at least ten months behind in rent. Again, in March 2014, PRC provided notice, demanding unpaid rent and removal of tax liens from the leasehold. The letter was sent to Globuil Resort's attorney in Korea and its corporate address on file via certified mail. The demand noted an outstanding balance of $61,602 of unpaid rent and allowed ten days to cure. Globuil Resort failed to cure and made no payment for the next two and half years. Once again, notice was given in September 2016 and no action was taken.

¶ 27 Globuil Resort asserts that equitable considerations are warranted because there was a good faith intent to cure and the closing of Hotel Riviera contributed to an insurmountable financial burden on the company. However, the court—in its sound discretion—was not convinced that Globuil Resort's assertions qualified as equitable considerations. Here, PRC sent out several written demands. There was neither evidence of full payment at any time prior to trial, nor genuine good faith efforts to cure the default. At no point were legal excuses or justification for years of unpaid rent provided.

¶ 28 Beyond Globuil Resort's inability to cure the default in rent, it neglected to maintain the premises in a sanitary condition and prevent waste. Based on reports, the hotel was abandoned with overgrown vegetation surrounding the building. Findings and Conclusions at 13. The pool contained algae and water build-up, which provided a safe breeding harbor for rodents and insects. *Id.*

Typhoons Soudelor and Yutu in 2015 and 2018, respectively, caused severe damage to the building, scattering roof tiles and hazardous fixtures across the property. *Id.* at 14. The buildup of debris and overgrown vegetation indicate Globuil Resort's less than minimal effort to maintain the property according to the terms of the lease. It was not unreasonable for the court to deny equitable relief. Therefore, we find the court did not err when it terminated the lease.

V. CONCLUSION

¶ 29 Under Rule 12(b)(6), we find PRC did not fail to state a claim for which relief can be granted and had the right to initiate termination proceedings granted in the lease. The court exercised an adequate assessment of PRC's proposed findings of fact and conclusions of law before adopting it almost verbatim. The court did not err in terminating the lease because it properly found that Globuil Resort failed to cure its default. For these reasons, we AFFIRM the Judgment.

So Ordered this 18th day of February, 2021.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
ROBERT J. TORRES, JR.
Justice Pro Tempore

COUNSEL

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Robert T. Torres, Saipan, MP, for Plaintiff-Appellee.

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JUDGMENT

Defendant-Appellant Globuil Resort Saipan Corporation, formerly known as Chang Shin Resort Saipan Corporation d.b.a. Hotel Riviera, appeals the Superior Court's Judgment terminating its lease with PRC, LLC. Globuil Resort presents three issues, arguing the court erred by: (1) not dismissing the amended complaint based on the claim that PRC is a Limited Liability Company and does not qualify as a person of Northern Mariana Descent under Article XII; (2) adopting PRC's proposed findings of fact and conclusions of law almost verbatim; and (3) applying the wrong legal standard to terminate the lease. For the reasons discussed in the accompanying opinion, the Court AFFIRMS the Superior Court's Judgment.

ENTERED this 18th day of February, 2021.

/s/
JUDY T. ALDAN
Clerk of the Supreme Court